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TO RUEHC/SECSTATE WASHDC PRIORITY 6524
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHCHI/AMCONSUL CHIANG MAI PRIORITY 3493
RUCPDO/DEPT OF COMMERCE WASHINGTON DC PRIORITY
RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY
RUEHBS/USEU BRUSSELS PRIORITY

UNCLAS SECTION 01 OF 02 BANGKOK 002403

SIPDIS

SENSITIVE
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STATE FOR EAP/MLS AND EB
COMMERCE FOR EAP/MAC/OKSA
TREASURY FOR OASIA
STATE PASS USTR FOR WEISEL
FEDERAL RESERVE SAN FRANCISCO FOR DAN FINEMAN

E.O. 12958: N/A
TAGS: [EINV](#) [ECON](#) [PREL](#) [TH](#)
SUBJECT: FOREIGN BUSINESS ACT CHANGES IMMINENT

REF: A. BANGKOK 2071 (CABINET SENDS INVESTMENT BILL TO
LEGISLATURE)
[1](#)B. BANGKOK 883 (FOREIGN MISSIONS RESPOND TO FBA)

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[1](#)1. (U) On April 25, the Thai National Legislative Assembly (NLA) approved for consideration the cabinet-proposed version of amendments to the Foreign Business Act (FBA). The purpose of the bill is to tighten restrictions (or, as the RTG prefers to term it; "close loopholes") in the current version of the FBA which has heretofore effectively permitted foreign investment in a variety of service sector industries nominally closed to majority foreign ownership.

[1](#)2. (U) The key amendments to the 1999 bill as shown on the NLA website include:

- Companies in sectors under lists 1 (businesses not permitted to aliens for "special reasons" such as media, agriculture and land-owning) and 2 (business related to national safety and security such as weapons, natural resources and domestic transport) of the three lists of proscribed industries will have three years to sell down their shareholdings to below 50 percent voting rights and equity ownership.
- Companies on List 3 (businesses in which Thai are not yet ready to compete including the professions, construction, retail and wholesale, and anything else not defined) may continue in business indefinitely without restructuring unless they are determined to be a nominee (defined as a company or individual acting in order to allow foreigners to operate a business in the proscribed areas in avoidance or violation of the provisions of this act) in which case they have one year to wind up their business or sell majority ownership and control to a Thai entity.
- Penalty for non-compliance increased from up to 3 years imprisonment to up to 5 years.
- Definition of a "foreign company" is expanded to include not only majority equity ownership but also majority foreign voting rights.

[1](#)3. (U) An ad hoc committee comprised of 18 NLA members, 5 persons from the Ministry of Commerce (including the Minister) and four others will consider the bill and propose amendments before a second reading of the bill. While there is no timeframe for this second reading, our sources have said they expect it within two weeks. A third and final

reading of the bill, essentially approval by the whole house, would be shortly after the second reading.

¶4. (SBU) A committee member told us that the committee is likely to include two additional clauses. One would prohibit companies that are grandfathered under list three from adding new branches or expanding their sales or production capacity by more than 30 percent beyond 2007 levels. A second would prohibit boards of directors of companies in proscribed sectors from being controlled in any way by foreign board members or members somehow under the control of foreign shareholders.

¶5. (SBU) Six foreign embassies in Bangkok have demarched the RTG arguing that redefining what comprises a "foreign" entity to include voting rights is contrary to Thai commitments under GATS. The RTG has never responded to these demarches but Commerce Minister Krirk-Krai, who previously was the Thai Ambassador to the WTO, has assured his Prime Minister that Thailand is within its rights despite reserving only equity ownership under its exemptions to its 1995 GATS accession commitments.

¶6. (SBU) Due to our bilateral treaty of Amity and Economic Relations, we know of only three companies which will be impacted by the amended FBA. Post is currently in touch with these companies and working with them in their interactions with the RTG. There may be U.S. citizens who formed holding companies through Thai nominees to get around restrictions on individuals owning land in Thailand, but none has yet contacted us.

¶7. (SBU) Comment: With the Thai economy slowing significantly and the flow of foreign direct investment in decline, it is hard to understand the strong drive behind these further restrictions on foreign investment at this time. Several analysts believe that the following factors are behind this:

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- The Thai elite lost significant assets in the aftermath of the 1997 financial crisis. Now that the elite is again flush, this is an opportunity to repurchase assets (at good prices) from foreigners who previously purchased low-priced assets from Thais when the Thai sellers were in distress.

- Thaksin embraced globalization. In the current government, everything must be anti-Thaksin.

- The preference is for a bigger piece of a smaller pie. Foreigners are still welcome to invest in manufacturing (to take advantage of foreign technology and supply chains) but for services -sold only within the nation- that is to be reserved for Thais.

- The fact that for the 35 years the FBA has been in existence there has never been a case of a company successfully prosecuted for violating the FBA (and only one court case) is seen not as foreigners using what the law provides but foreigners taking advantage of Thai's easy-going nature. The amendments are to implement the law's intent, according to its proponents.

¶8. (SBU) Comment continued: Thailand is in the midst of political confusion and a resulting wave of nationalism. Many sophisticated Thais know that these amendments are not in Thailand's longer term interest but are reluctant to speak out for fear of being branded "a slave to the farangs" as one Thai industrial estate developed termed it. This cycle will pass, but the country's economy will be far more vulnerable to downturns and find it more difficult to attract FDI in the future.

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